

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

**RC PETITION**

DO NOT WRITE IN THIS SPACE

Case No. 31-RC-300668

Date Filed 8/2/2022

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

**2a. Name of Employer**  
Coway USA, Inc.

**2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code)**  
See attachment

**3a. Employer Representative - Name and Title**  
See attachment

**3b. Address (If same as 2b - state same)**  
See attachment

**3c. Tel. No.**  
See attachment

**3d. Cell No.**  
See attachment

**3e. Fax No.**  
See attachment

**3f. E-Mail Address**  
See attachment

**4a. Type of Establishment (Factory, mine, wholesaler, etc.)**  
Services (installation)

**4b. Principal product or service**  
Installation of air and water filtration systems

**5a. City and State where unit is located:**  
See attachment

**5b. Description of Unit Involved**  
Included: See attachment  
Excluded: See attachment

**6a. No. of Employees in Unit:**  
Approximate y 140  
**6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner?** Yes ☒ No ☐

**Check One:** ☒ **7a.** Request for recognition as Bargaining Representative was made on (Date) 07/22/2022 and Employer declined recognition on or about 07/26/2022 (Date) (If no reply received, so state).  
☐ **7b.** Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

**8a. Name of Recognized or Certified Bargaining Agent (If none, so state).**  
None

**8b. Address**

**8c. Tel No.**

**8d Cell No.**

**8e. Fax No.**

**8f. E-Mail Address**

**8g. Affiliation, if any**

**8h. Date of Recognition or Certification**

**8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)**

**9. Is there now a strike or picketing at the Employer's establishment(s) involved?** No If so, approximately how many employees are participating? \_\_\_\_\_  
(Name of labor organization) \_\_\_\_\_, has picketed the Employer since (Month, Day, Year) \_\_\_\_\_.

**10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)**  
None

**10a. Name**

**10b. Address**

**10c. Tel. No.**

**10d. Cell No.**

**10e. Fax No.**

**10f. E-Mail Address**

**11. Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.

**11a. Election Type:** ☒ Manual ☐ Mail ☐ Mixed Manual/Mail

**11b. Election Date(s):**  
Monday, August 22, 2022

**11c. Election Time(s):**  
8:00 AM to 8:00 PM

**11d. Election Location(s):**  
St James' Episcopal Church 3903 Wilshire Blvd Los Angeles CA 90010

**12a. Full Name of Petitioner (including local name and number)**  
California Retail and Restaurant Workers Union

**12b. Address (street and number, city, state, and ZIP code)**  
941 S. Vermont Ave., Suite 101 #301, Los Angeles, CA 90006

**12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state)**  
None

**12d. Tel No.**

**12e. Cell No.**

**12f. Fax No.**

**12g. E-Mail Address**

**13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.**

**13a. Name and Title** (b) (6), (b) (7)(C)

**13b. Address (street and number, city, state, and ZIP code)**  
941 S. Vermont Ave Suite 101 #301 Los Angeles CA 90006

**13c. Tel No.**

**13d. Cell No.**

**13e. Fax No.**

**13f. E-Mail Address**

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print)  
Ju e Gutman Dickson

Signature

Title  
Attorney

Date  
08/02/2022

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

**Attachment to RC Petition****Filed:** August 2, 2022**Employer:** Coway USA, Inc.**2b. Addresses of Establishments Involved**

4221 Wilshire Blvd. #210  
Los Angeles, CA 90010

520 S. Lafayette Park Pl. #557  
Los Angeles, CA 90057

17101 S. Central Ave.  
Carson, CA 90746

17100 Pioneer Blvd., Ste. 345  
Artesia, CA 90701

6131 Orangethorpe Ave., Ste. 107  
Buena Park, CA 90620

**3a. Employer Representative**

Sarah Kim  
Human Resources Director  
4221 Wilshire Blvd. #210  
Los Angeles, CA 90010  
Email: sarah@coway-usa.com  
Telephone: (213) 480-1600  
Fax: (213) 386-3990  
Cell: (323) 788-9586

Won Tae Kim  
Chief Executive Officer  
4221 Wilshire Blvd. #210  
Los Angeles, CA 90010  
Email: kwt@coway-usa.com  
Telephone: (213) 369-6083

Min Gi Kim  
General Manager  
4221 Wilshire Blvd. #210  
Los Angeles, CA 90010  
Email: zosokae@coway-usa.com  
Telephone: (213) 615-9505

**5a. City and State Where Unit is Located**

Los Angeles, CA

Carson, CA

Artesia, CA

Buena Park, CA

**5b. Description of Unit Involved**

**Included:** All full-time and regular part-time Coway Ladies (CODY), Coway Doctors (CODOC), and Coway Technicians (CTs) employed by Coway USA, Inc. at its five locations in Los Angeles County and Orange County, at 4221 Wilshire Blvd. #210, Los Angeles, CA 90010; 520 S. Lafayette Park Pl. #557, Los Angeles, CA 90057; 17101 S. Central Ave., Carson, CA 90746; 17100 Pioneer Blvd., Ste. 345, Artesia, CA 90701; and Orangethorpe Ave., Ste. 107, Buena Park, CA 90620.

**Excluded:** 1099 workers whose services are limited strictly to retail, and all other employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31**

<b>COWAY USA, INC.,</b>	)	
	)	
Employer,	)	
	)	
and	)	Case 31-RC-300668
	)	
<b>CALIFORNIA RETAIL AND</b>	)	
<b>RESTAURANT WORKERS UNION,</b>	)	
	)	
Petitioner.	)	

**EMPLOYER’S OPPOSITION TO PETITIONER’S MOTION TO PRECLUDE**

This matter is before the Region on the Petitioner California Retail and Restaurant Workers Union’s (the Petitioner) motion to preclude the Employer Coway USA, Inc. (the Employer) from presenting evidence or otherwise litigating issues raised in its Statement of Position on the grounds that the Employer did not timely serve its Statement of Position on the Petitioner. The Petitioner’s motion should be denied.

The Employer filed its Statement of Position at 11:53 a.m. PST on August 15, 2022, and thereafter promptly served a copy of the document on the Petitioner’s counsel via email. The Petitioner claims it did not receive the email serving the Statement of Position until 12:03 p.m. PST and, therefore, the Employer should be precluded from presenting evidence or otherwise litigating the issues raised in the Statement of Position at the August 23, 2022 hearing. The Petitioner’s reliance on Section 102.66(d) of the Board’s Rules and Regulations (and cases applying that rule) to support its position is misplaced.

Here, unlike in the cases the Petitioner relies on, the—at most—3-minute delay in the Petitioner receiving a copy of the Employer’s Statement of Position is de minimis, and to hold

otherwise would be inconsistent with Board law. The Board has consistently recognized, in a variety of circumstances, that 2-3 minutes is a negligible or de minimis amount of time. See, e.g., *Component Bar Products*, 364 NLRB 1901, 1911 (2016) (finding employee’s phone call during working time did not cause a “vast disruption” to employer’s operations, as employer claimed, where “the call lasted only a couple of minutes, if that, a negligible amount of time”); *Machinists Lodge 1233 (General Dynamics)*, 284 NLRB 1101, 1106 (1987) (finding “3-minute delay . . . is de minimis” in connection with alleged unlawful picketing misconduct); *P.R. Mallory & Co., Inc.*, 171 NLRB 457, 462 (1968) (finding supervisor’s performance of unit work for “2 or 3 minutes at most” de minimis).

It makes no difference that the above cases do not arise in the context of Section 102.66(d). What matters is that the Board—like all agencies and courts—recognizes the de minimis concept and applies it to prevent manifest injustice, including potential infringement on employees’ protected rights. Again, this case is different from the cases cited by the Petitioner in which the Board precluded parties from presenting evidence based on their failure to strictly follow the rules, as none of those cases involved a de minimis amount of time (i.e., 2-3 minutes). See, e.g., *Ikea Distribution Services, Inc.*, 370 NLRB No. 109, slip op. at 1 (2021) (1 hour and 41 minutes late); *Williams-Sonoma Direct, Inc.*, 365 NLRB No. 13, slip op. at 1 (2017) (3 days late); *Brunswick Bowling Products, LLC*, 364 NLRB 1233, 1233 (2016) (3 hours and 20 minutes late).

While Section 102.66(d) has been strictly construed by the Board, it has never been construed so narrowly or unreasonably as to preclude a party from presenting evidence because the opposing party did not receive its Statement of Position until, at most, 3 minutes after noon 8 days before the hearing. In this matter, the Petitioner will suffer no prejudice if the Employer is allowed to present evidence as explained in its Statement of Position. Clearly, the strict application

of Section 102.66(d) in this case is a harmful example of applying form over substance. In this matter, there will be significant infringement on the rights of employees who should be protected by the Act, not harmed by the strict adherence to a procedure that was followed sufficiently to allow the Petitioner to protect its interest. Accordingly, the Regional Director should deny the Petitioner's motion.

Respectfully Submitted,

EMPLOYER  
**Coway USA, Inc.**



---

Michael D. Carrouth, Esquire  
Fisher Phillips LLP  
1320 Main Street, Suite 750  
Columbia, SC 29201  
**Attorney for Employer Coway USA, Inc.**  
[mcarrouth@fisherphillips.com](mailto:mcarrouth@fisherphillips.com)

Dated: August 18, 2022

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31**

<b>COWAY USA, INC.,</b>	)	
	)	
Employer,	)	
	)	
and	)	Case 31-RC-300668
	)	
<b>CALIFORNIA RETAIL AND</b>	)	
<b>RESTAURANT WORKERS UNION,</b>	)	
	)	
Petitioner.	)	

**CERTIFICATE OF SERVICE**

It is hereby certified that on August 18, 2022, **Employer's Opposition to Petitioner's Motion to Preclude** in the above-captioned case is being served upon Petitioner, California Retail and Restaurant Workers Union, and its attorney, via electronic mail at the following:

**(b) (6), (b) (7)(C)**

CRRWU

941 S. Vermont Ave., Suite 101 #301

Los Angeles, CA 90006

<sup>(b) (6)</sup> [@crrwu.org](mailto:igd@crrwu.org); **(b) (6), (b) (7)(C)**

Julie Gutman Dickinson, Attorney at Law

Hector De Haro, Attorney at Law

Samantha Keng, Attorney at Law

Bush Gottlieb, A Law Corporation

801 North Brand Blvd., Suite 950

Glendale, CA 91202

[igd@bushgottlieb.com](mailto:igd@bushgottlieb.com)

Fax: (818) 973-3201

**(b) (6), (b) (7)(C)**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**COWAY USA, INC.,**

Employer,

and

**CALIFORNIA RETAIL AND  
RESTAURANT WORKERS UNION,**

Petitioner.

Case No. 31-RC-300668

**PETITIONER’S MOTION TO PRECLUDE PURSUANT TO 29 C.F.R. § 102.66(d)**

The California Retail and Restaurant Workers Union (“CRRWU” or the “Union”) move for an Order to Preclude Coway USA, Inc. (“Coway” or the “Employer”) from presenting evidence before the Region in Case No. 31-RC-300668. Pursuant to 29 C.F.R. § 102.66(d), the Employer should be prohibited from presenting evidence or otherwise litigating the issues raised in its untimely-served Statement of Position.

Section 102.66(d) of the Board’s Rules and Regulations, as amended, clearly states:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party’s Statement of Position.

As further set forth in Section 102.63(b)(1), an employer “shall file with the Regional Director and serve on the parties named in the petition its Statement of Position such that it is received by the Regional Director and the parties named in the petition by the date and time specified in the Notice of Hearing, which shall be at noon 8 business days following the issuance and service of the Notice of Hearing.”



Pursuant to Section 102.63(b)(1), the Employer's Statement of Position should have been timely filed and served on the Union by noon on August 15, 2022. The Employer served its Statement of Position on the Union at 12:03 P.M. on August 15, 2022, three minutes after the deadline set forth in the Notice of Hearing issued by the Region on August 3, 2022.<sup>1</sup> Although Section 102.63(b)(1) elaborates that "[t]he Regional Director may postpone the time for filing and serving the Statement of Position upon request of a party showing good cause," the Employer made no such request here and had not shown anything even resembling good cause. In fact, the Employer has not provided any reason or explanation for its delay, nor is there any reason that would excuse its failure to timely serve the Union with its Statement of Position.

In February 2022, Region 3 granted a Motion to Preclude filed by Petitioner Workers United on similar grounds. *See* Order Granting Motion to Preclude and Denying Motion to Bar Evidence in Case 03-RC-289785 at 2 (Feb. 18, 2022). In this motion, the Petitioner argued that because it received the Employer's Statements of Position eight minutes past the deadline, the Employer, Starbucks Corporation, should be precluded from presenting evidence or otherwise litigating the issues raised in its untimely-served Statements of Position. In granting the Petitioner's Motion to Preclude, the Region noted that under *Brunswick Bowling Products, LLC*, 364 NLRB No. 96 (2016), a showing of prejudice by the Petitioner was not required: "Section 102.66(d) does not require that prejudice to another party be shown to have resulted from a failure to comply with the statement-of-position requirement in order for preclusion to be imposed." *Id.*, slip op. at 3.

---

<sup>1</sup> A time-stamped confirmation of the Employer's service of its Statement of Position on the Union and the Union's counsel at 12:03 P.M. on August 15, 2022 is attached as Exhibit 1.

In *URS Federal Services, Inc.*, 365 NLRB No. 1, slip op. at 2, the Board specifically noted that in enacting the 2015 amendments to its Rules and Regulations, the Board “deliberately created certain new bright-line provisions and consequences for noncompliance . . . includ[ing] for the statement of position in 102.66(b) and (d).” As Region 3 observed, “Section 102.63(b)(1) clearly and unambiguously sets forth the timeline for submitting Statements of Position” while “Section 102.66(d) likewise clearly establishes the consequences for failure to meet this deadline.” *See Order Granting Motion to Preclude and Denying Motion to Bar Evidence in Case 03-RC-289785* at 2 (Feb. 18, 2022).

As Section 102.63(b)(1) unequivocally states, the Regional Director may postpone the due date and time for filing of a Statement of Position upon a showing of good cause. Here, the Employer made no such request, and the Board’s Rules and Regulations make no other allowance for the untimely filing and service of a Statement of Position. Indeed, the Board in *URS Federal Service* acknowledged this deadline as a bright-line rule. 365 NLRB No. 1, slip op. at 2. *See also Williams-Sonoma Direct, Inc.*, 365 NLRB No. 13 (2017) (adopting Regional Director’s decision to reject employer’s statement of position and preclude litigation of issues raised therein based solely on the employer’s failure to timely serve its statement of position on the petitioner).

Furthermore, the situation at hand presents no extenuating circumstances that the Employer could rely on to excuse the untimely service of its Statement of Position. In the Starbucks Corporation and Workers United case, Starbucks argued that its untimely filing was due, in part, to “unforeseeable administrative difficulties” and technological glitches that arose from the “uniquely complex” nature of the filing, which required the simultaneous filing and submission of six Statements of Position and thirteen employee lists. *See Starbucks Corporation’s Response to Petitioner’s Motion to Preclude Pursuant to 29 C.F.R. § 102.66(d)* at 1-2 (Feb. 18, 2022). Even if

the Region had found Starbucks Corporation’s argument to be availing—which it plainly declined to do—no such circumstances exist here. Coway’s Statement of Position consists of only a single Statement of Position form and an employee list that totals only five pages in length—a far cry from a “uniquely complex” filing that would be likely to occasion technological issues or other administrative hurdles. *See id.* at 1.

As stated by the Board in *Brunswick Bowling Products, LLC*, 364 NLRB No. 96 (2016), a party moving for an Order to Preclude on the basis of the untimely filing of a Statement of Position need not show that it suffered prejudice as a result of the delay. The mere fact that the Employer untimely served the Petitioner with its Statement of Position is sufficient grounds to grant a Motion to Preclude. Thus, the Union respectfully requests that the Region grant its Motion to Preclude pursuant to 29 C.F.R. § 102.66(d).

DATED: August 15, 2022

BUSH GOTTLIEB, A Law Corporation

By:           /s/ Julie Gutman Dickinson            
JULIE GUTMAN DICKINSON  
HECTOR DE HARO  
SAMANTHA KENG  
Attorneys for Petitioner California Retail and  
Restaurant Workers Union

# **EXHIBIT 1**

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) 12:03 PM

To: (b) (6), (b) (7)(C) @crrwu... & 5 more > 

# Conway USA and California Retail and Restaurant Workers Union 31-RC-300668

Good afternoon:

Attached please find a copy of the Statement of Position regarding the above matter, which was filed with the NLRB.

If you need anything further, please contact our office.



(b) (6), (b) (7)(C)

Fisher &amp; Phillips LLP

1320 Main Street | Suite 750 | Columbia, SC 29201

(b) (6), (b) (7)(C) @fisherphillips.com | O: (b) (6), (b) (7)(C)

[Website](#)On the Front Lines of Workplace Law<sup>SM</sup>

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.



## Sheryl Brennan

---

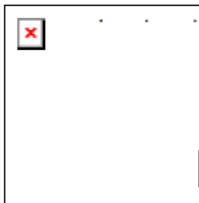
**From:** (b) (6), (b) (7)(C) @fisherphillips.com>  
**Sent:** Monday, August 15, 2022 12:03 PM  
**To:** (b) (6), (b) (7)(C) @crrwu.org; (b) (6), (b) (7)(C) Julie Gutman Dickinson  
**Cc:** Carrouth, Michael; (b) (6), (b) (7)(C)  
**Subject:** Conway USA and California Retail and Restaurant Workers Union 31-RC-300668  
**Attachments:** FILED Conway State of Position 8.15.22.pdf; Filing confirmation 8.15.22 Conway SOP.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Good afternoon:

Attached please find a copy of the Statement of Position regarding the above matter, which was filed with the NLRB.

If you need anything further, please contact our office.



(b) (6), (b) (7)(C)

Fisher & Phillips LLP  
1320 Main Street | Suite 750 | Columbia, SC 29201  
(b) (6), (b) (7)(C) @fisherphillips.com | O: (b) (6), (b) (7)(C)

Website

On the Front Lines of Workplace Law<sup>SM</sup>

---

*This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.*

## STATEMENT OF SERVICE

I hereby certify that a copy of **PETITIONER'S MOTION TO PRECLUDE PURSUANT TO 29 C.F.R. § 102.66(d)** was submitted by e-filing to Region 31 of the National Labor Relations Board on August 15, 2022.

The following parties were served with a copy of said document by electronic mail on August 15, 2022:

Michael Carrouth, Attorney at Law  
Sarah Kim, Human Resources Director  
Won Tae Kim, Chief Executive Officer  
Min Gi Kim, General Manager

[mcarrouth@fisherphillips.com](mailto:mcarrouth@fisherphillips.com)  
[sarah@coway-usa.com](mailto:sarah@coway-usa.com)  
[kwt@coway-usa.com](mailto:kwt@coway-usa.com)  
[zosokae@coway-usa.com](mailto:zosokae@coway-usa.com)

Respectfully submitted,  
/s/ Samantha Keng  
Samantha Keng  
Bush Gottlieb